

11 September 2007

**NZX Regulation (“NZXR”) Decision  
Cavalier Corporation Limited (“CAV”)  
Application for waiver from NZSX Listing Rules 7.3.5(a) and 9.2.1**

**Background**

1. CAV intends forming a new subsidiary (“Newco”) to acquire the material business assets (“the Acquisition”) of Norman Ellison Holdings Ltd, Horizon Yarns Ltd, NEC Manufacturing Ltd, Norman Ellison Carpets Ltd, Norman Ellison Carpets Pty Ltd and Carpet Distributors Ltd (“the Vendor Companies”).
2. On completion of the Acquisition, certain shareholders and employees of the Vendor Companies (namely Warwick Norman, Russell Harding, Warren Drinkwater, Tom Rosewarne and Blair Slade-Jones “the Subscribers”) will become employees of Newco. Warwick Norman will become CEO and a director of Newco.
3. Under the terms of the Acquisition, the Subscribers (and Doug Elliffe, a shareholder of the Vendor Companies) must in aggregate subscribe for:
  - (a) \$2.4 million of shares in Newco (approximately 30% of Newco’s issued shares); and
  - (b) \$4.9 million of shares in CAV (approximately 2.4% of CAV’s issued shares based on the current market price) (“the Shares”).
4. The Share subscription will occur one to two months after completion of the Acquisition. NZX has been advised that this delay is to accommodate the Subscriber’s external legal and tax advice.

**Application 1 – Waiver from Listing Rule 7.3.5(a)**

5. CAV has applied to NZXR for a waiver from NZSX Listing Rule (“Rule”) 7.3.5(a) to allow CAV to issue the Shares to the Subscribers. A waiver is required because at the time the Shares are issued the Subscribers will be Employees (and a Director in the case of Mr Norman) of CAV subsidiary Newco.
6. In support of its application, CAV submits that:

- (a) the policy objective of Rule 7.3.5 will be maintained because the Subscribers are not Employees (or a Director in the case of Mr Norman) of Newco at the time the Acquisition, including the obligation to subscribe for the Shares, is entered into; and
- (b) the issue of the Shares only falls outside the ambit of Rule 7.3.5 because the Acquisition has been structured so that the Shares must be subscribed for after the Subscribers become Employees (or a Director in the case of Mr Norman). The Subscribers become Employees of Newco in order to seek to maximise the benefit from the Acquisition for CAV and to protect CAV and its shareholders by ensuring a smooth transition and transfer of goodwill.

### Rule 7.3.5

- 7. Rule 7.3.5 allows an Issuer to make an issue of equity securities within the 15% threshold limit without shareholder approval. Under Rule 7.3.5(a) the issue of the securities must not be made in whole or in part to any Director of the Issuer or Associated Person of a Director or Employee of the Issuer.
- 8. The policy underlying Rule 7.3.5(a) is to prevent the exception in Rule 7.3.5 being exploited by issues of securities on terms unfavourable to the Issuer to persons who may be in a position to influence that Issuer (e.g. Directors or Employees of the Issuer or its subsidiaries).

### Decision

- 9. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants CAV a waiver from the requirement in Rule 7.3.5(a) so that CAV may issue the Shares to the Subscribers without obtaining shareholder approval.
- 10. This decision is made on the condition that CAV provides NZX with signed certificates from all CAV directors stating that the Acquisition, including the terms of the Share subscription, will be undertaken on an arms' length and commercial basis and that they consider it to be in the best interests of CAV and its shareholders.

### Reasons

- 14. In coming to its decision NZXR considered that:
  - (a) the policy behind Rule 7.3.5(a) will not be compromised because at the time the Acquisition, including the obligation to subscribe for the Shares, is negotiated and entered into CAV and the Subscribers are arms' length unrelated parties. The Subscribers only become Employees (and a Director in the case of Mr Norman) of Newco as from completion of the

Acquisition, and therefore are not in a position to influence the terms of the Share issue other than in respect of arms' length commercial negotiation. This must be confirmed in writing by CAV directors.

- (b) the Share issue is unlikely to result in any person or group of Associated Persons materially increasing their ability to exercise or direct the control of CAV. NZXR notes that no application has been made or granted for a waiver of the restrictions in Rule 7.5, which relates to issues of Equity Securities affecting control of an Issuer.
- (c) NZXR has previously granted waivers from Rule 7.3.5(a) in circumstances where it has been satisfied that the relationship between the Issuer and the Employee/Director has been immaterial or plainly unlikely to have influenced the promotion of the proposal.

#### Application 2 – Waiver from Rule 9.2.1

- 11. CAV has applied to NZXR for a waiver from Rule 9.2.1 to enter into the Acquisition, including the issue of the Shares, without obtaining shareholder approval.
- 12. Rule 9.2.1 is triggered because the Subscribers, who become “Related Parties” of CAV on completion of the Acquisition (by virtue of their engagement as executive officers and Director in the case of Mr Norman of CAV subsidiary Newco), will be party to the Share subscriptions, a related series of transactions to which the Material Transaction (the Acquisition) forms part.
- 13. In support of its application, CAV submits that at the time the Acquisition, including the obligation to subscribe for the Shares, is negotiated and entered into CAV and the Subscribers are arms' length unrelated parties. The Subscribers only become a “Related Party” of CAV on becoming executive officers (and Director in the case of Mr Norman) of Newco as from completion of the Acquisition. The Shares are then subsequently subscribed for by the Subscribers. Accordingly, CAV considers that the element of favourable treatment to Related Parties does not exist and that this situation falls squarely within the criteria contemplated by Footnote 1 to Rule 9.2.1.

#### Rule 9.2

- 14. Rule 9.2 is aimed at regulating those transactions in which a person may gain favourable consideration because of their relationship with the Issuer. In addition to these transactions, the Rule is intended to capture transactions that may be perceived to be favourable.
- 15. Rule 9.2.1 provides that:

“An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or...

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.”

16. Footnote 1 to the Rule provides that:

“NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.”

### Decision

17. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants CAV a waiver from Rule 9.2.1 to allow CAV to enter into the Acquisition, including the issue of the Shares to the Subscribers, on the condition that the Directors of CAV provide the certificate described in paragraph 10 above.

### Reasons

18. In coming to this decision, NZXR has considered that:

- (a) it is satisfied Footnote 1 to Rule 9.2.1 applies because the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced CAV’s decision to enter into the Acquisition. In this regard:
  - (i) NZXR has been advised that at the time the Acquisition, including the obligation to subscribe for the Shares, is negotiated and entered into CAV and the Subscribers are arms’ length unrelated parties; and
  - (ii) It is a condition of the waiver that NZXR receives certification from the Directors of CAV in the terms outlined in paragraph 10 above.
- (b) NZXR has no reason not to accept that the CAV Board will only proceed with the Acquisition if it considers that its terms represent fair value for CAV and its shareholders. There is no incentive for CAV to enter into the Acquisition at anything other than commercial terms.

### Timing and Confidentiality

19. NZXR determined that the application for the waiver and the decision in relation to that waiver should remain confidential unless and until an announcement is made in relation to the proposed Acquisition and has agreed to delay publication of this decision until such time.

ENDS